



DATE MAILED: 03/09/2004

PTO-90C (Rev. 10/03)

**Advisory Action**

Application No.

09/747,537

Applicant(s)

MIGLIORINI ET AL. *lb*

Examiner

Kevin R Kruer

Art Unit

1773

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 20 January 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: NONE.Claim(s) rejected: 1-7, 9, 10, 12-30, 33, 35, 37, and 38.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

***Advisory Action***

The declaration under 37 CFR 1.132 filed January 20, 2004 is insufficient to overcome the rejection of claims 1-7, 9, 10, 12—30, 33, 35, 37, and 38 based upon the teachings of Blemberg and Keller as set forth in the last Office action because:

Mr. Migliorini states that his experience "indicates that adjacent layers of biaxially oriented co-extruded polymeric films produced from the same category of polymeric materials, such as polyolefin-based materials, do not exhibit low adhesion..." Mr. Migliorini, therefore, concludes that one of ordinary skill in the art would not have been motivated to blend the components of the core layer and the skin layer in order to improve interlayer adhesion as suggested by Blemberg. However, the prior art indicates that oriented isotactic polypropylene films are known to exhibit poor adhesion to heat sealing layers, such as polyethylene compositions, due to their non-polar character and high degree of orientation. Therefore, the examiner maintains the position that one of ordinary skill in the art would have been motivated by Blemberg to add the composition of the skin layer to the core layer in order to improve adhesion between said layers.

Mr. Migliorini further argues that biaxially oriented isotactic polypropylene films are oriented in commercial processes without problems of tearing or breaking during the orientation process. It is, therefore, unnecessary to add a modifier to the core layers of such films to prevent tearing or breaking during orientation. However, Mr. Migliorini admits that any orientation process increases the strain in a polymeric film. Furthermore, the strain will increase as the degree of orientation increases. Since strain

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will increase during any orientation process, the examiner maintains the position that the use of a modifier in order to reduce the crystallinity of a core material in order to prevent tearing during orientation as taught in Keller is relevant to any oriented film, regardless of the method by which the film is oriented.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on 571-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*K-R K*

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*Paul Thibodeau*

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